

## SPECIMEN

**AGREEMENT # \_\_\_\_\_**  
**BETWEEN**  
**OWNER AND CONTRACTOR**  
**(M.G.L. CH. 149 CONTRACT)**

**THIS AGREEMENT BETWEEN OWNER AND CONTRACTOR** for *(insert project title)* \_\_\_\_\_  
\_\_\_\_\_ (hereinafter the "Project") is made the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between *(insert company name)* \_\_\_\_\_ a \_\_\_\_\_ corporation  
*(or partnership, etc)* organized under the laws of the Commonwealth of Massachusetts, *(or State of \_\_\_\_\_)* with a usual place of business at \_\_\_\_\_, hereinafter called the **CONTRACTOR** and the Town of Needham, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting through its Town Manager, hereinafter referred to as the **OWNER**.

**WITNESSETH** that the **CONTRACTOR** and the **OWNER** for the consideration hereinafter named agree as follows:

In all respects, this contract shall be governed by and performed consistently with all laws of the Commonwealth of Massachusetts for public construction contracts including but not limited to M.G.L. Ch. 7, 10, 30, 144 and 149. The provisions of the Massachusetts General Laws regarding public construction shall take precedence over any and all other contract provisions or documents. Any conflicts among provisions and/or between documents shall be resolved and/or interpreted according to the Massachusetts General Laws. The **CONTRACTOR** warrants that he is familiar with and agrees to abide by all laws of the Commonwealth of Massachusetts.

### **ARTICLE 1. CONTRACT DOCUMENTS**

The Contract Documents consist of the following, and, in the event of conflicts or discrepancies among them, they shall be interpreted on the basis of the following priorities:

**FIRST**            THIS AGREEMENT BETWEEN OWNER AND CONTRACTOR

**SECOND**        CONTRACTOR'S BID DATED \_\_\_\_\_

**THIRD**          ADDENDA \_\_\_\_ ISSUED PRIOR TO THE EXECUTION OF THIS AGREEMENT, WITH THE LATER HAVING GREATER PRIORITY, AND ALL MODIFICATIONS EXECUTED SUBSEQUENT THERETO

**FOURTH**        DRAWINGS AND SPECIFICATIONS FOR THE PROJECT

**FIFTH**          PROJECT MANUAL AND BIDDING DOCUMENTS  
DATED \_\_\_\_\_

**SIXTH**          COPIES OF ALL REQUIRED BONDS, CERTIFICATES OF INSURANCE  
AND LICENSES REQUIRED UNDER THE CONTRACT,

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EACH OF WHICH IS ATTACHED HERETO.

These documents form the entire Agreement between the parties and there are no other agreements between the parties. Any amendment or modification to this Agreement must be in writing and signed by an official with the authority to bind the OWNER.

### **ARTICLE 2. SCOPE OF THE WORK**

The CONTRACTOR shall furnish all materials, labor and equipment and perform all work shown on the contract documents prepared by the OWNER and the CONTRACTOR agrees to do everything required by the Agreement, Specifications, Plans and Conditions of the Contract.

### **ARTICLE 3. TIME OF COMPLETION**

- 3.1 The work to be performed under this Contract shall be commenced within 10 calendar days after the OWNER issues a written Notice to Proceed to the CONTRACTOR and shall be substantially completed on or before \_\_\_\_\_ and shall be entirely completed no later than \_\_\_\_\_.
- 3.2 If the CONTRACTOR shall fail to complete the Project by \_\_\_\_\_, it shall be liable to pay the OWNER the amount of One Thousand Dollars (\$1,000.00) for each calendar day that the Project is not complete. This amount is fixed and agreed upon because of the difficulty of ascertaining the OWNER's actual damages. It is mutually understood that the said amount is a reasonable approximation or estimate of the OWNER's damages as of the date of the Agreement. This amount may be withheld from amount otherwise due to CONTRACTOR pursuant to periodic or final applications for payment, in addition to retainage and other backcharges.
- 3.3 The CONTRACTOR hereby agrees that if he fails to commence the work, carry on the work with reasonable speed or stops work altogether without due cause, as determined in each case by the OWNER, the OWNER may give notice to the CONTRACTOR in writing to proceed with the work as per the schedule or to carry on the work with reasonable speed. Three days after the presentation of such notice if the work is not proceeding to the satisfaction of the OWNER, the CONTRACTOR shall be considered to have defaulted in the performance of this Agreement.

### **ARTICLE 4. THE CONTRACT SUM *(Chose one and delete all others)***

The OWNER shall pay the CONTRACTOR for the performance of this Agreement the sum of \_\_\_\_\_ (\$\_\_\_\_\_), including all reimbursable expenses.

*OR*

- 4.1 The OWNER shall pay the CONTRACTOR for the performance of this Agreement the Base Annual Price in the amount of (in word) \_\_\_\_\_ (\$\_\_\_\_\_), including all reimbursable expenses.

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- 4.2. The OWNER shall pay the CONTRACTOR for the performance of any additional work, approved by the Department of Public Facilities – Operations, and shall be invoiced to the OWNER, at the unit prices specified in the Contractor’s proposal, in an amount of (in words) \_\_\_\_\_ (\$\_\_\_\_\_) regular time; (in words) \_\_\_\_\_ (\$\_\_\_\_\_) for overtime; and (in words) \_\_\_\_\_ (\$\_\_\_\_\_) for Sundays and Holidays.

### ARTICLE 5. PAYMENT

In accordance with Mass. Gen. L. Ch. 30, Sec. 39K, the following paragraph is binding upon the OWNER AND CONTRACTOR:

Within fifteen days (forty-five days in the case of the Commonwealth, including local housing authorities) after receipt from the CONTRACTOR, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the CONTRACTOR for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the CONTRACTOR has title or to which a subcontractor has title and has authorized the CONTRACTOR to transfer title to the awarding authority, less (1) a retention based on its estimate of the fair value of its claims against the CONTRACTOR and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of Mass. Gen. L. Ch. 30, Sec. 39F, and less (3) a retention not exceeding five per cent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the CONTRACTOR fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one percent of the original Contract price, or (b) the CONTRACTOR substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the CONTRACTOR the entire balance due on the Contract less (1) a retention based on its estimate of the fair value of its claims against the CONTRACTOR and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of Mass. Gen. L. Ch. 30, Sec. 39F, or based on the record of payments by the CONTRACTOR to the subcontractors under this Contract if such record of payment indicates that the CONTRACTOR has not paid subcontractors as provided in section thirty-nine F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the CONTRACTOR; provided that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the Commonwealth) after receipt of such a periodic estimate from the CONTRACTOR at the place designated by the awarding authority if such a place is so designated. The CONTRACTOR agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

## **ARTICLE 6. PAYMENT OF SUBCONTRACTORS**

In accordance with Mass. Gen. L. Ch. 30, Sec. 39F, the following subparagraphs (a) through (i) are binding between the general CONTRACTOR and each subcontractor:

- (a) Forthwith after the general CONTRACTOR receives payment on account of a periodic estimate, the general CONTRACTOR shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general CONTRACTOR.
- (b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work shall be due the subcontractor; and the awarding authority shall pay that amount to the general CONTRACTOR. The general CONTRACTOR shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general CONTRACTOR.
- (c) Each payment made by the awarding authority to the general CONTRACTOR pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general CONTRACTOR for the account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general CONTRACTOR to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general CONTRACTOR or which is to be included in a payment to the general CONTRACTOR for payment to the subcontractor as provided in subparagraphs (a) and (b), the awarding authority shall act upon the demand as provided in this section.
- (d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general CONTRACTOR the balance due under the subcontract, including any amount due for extra labor and materials furnished to the general CONTRACTOR, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the general CONTRACTOR at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the awarding

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authority and delivered or so mailed a copy to the general CONTRACTOR, the general CONTRACTOR may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general CONTRACTOR and of the amount due for each claim made by the general CONTRACTOR against the subcontractor.

- (e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general CONTRACTOR, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general CONTRACTOR in the sworn reply; provided, that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the subcontractor forthwith after removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this subparagraph.
- (f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest-bearing joint account in the names of the general CONTRACTOR and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general CONTRACTOR and the subcontractor, and shall notify the general CONTRACTOR and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general CONTRACTOR and the subcontractor or as determined by decree of a court of competent jurisdiction.
- (g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to subparagraph (f) shall be made out of amounts payable to the general CONTRACTOR at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the general CONTRACTOR and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general CONTRACTOR to the extent of such payment.
- (h) The awarding authority shall deduct from payments to a general CONTRACTOR amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (f), are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any



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claims against such amounts by creditors of the general CONTRACTOR.

- (i) If the subcontractor does not receive payment as provided in subparagraph (a) or if the general CONTRACTOR does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (a), the subcontractor may demand direct payment by following the procedure in subparagraph (d) and the general CONTRACTOR may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general CONTRACTOR. Thereafter the awarding authority shall proceed as provided in subparagraphs (e), (f), (g) and (h).

### **ARTICLE 7. ADJUSTMENT OF CONTRACT PRICE WHERE SITE CONDITIONS DIFFER SUBSTANTIALLY OR MATERIALLY FROM CONDITIONS INDICATED IN PLANS OR CONTRACT DOCUMENTS**

As required by G.L. Ch. 30, Section 39N, the parties hereby agree:

If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

### **ARTICLE 8. AWARDING AUTHORITY MAY ORDER GENERAL CONTRACTOR TO SUSPEND, DELAY, ETC. WORK; ADJUSTMENT IN CONTRACT PRICE; SUBMISSION OF CLAIMS**

Pursuant to G.L. c. 30, Section 39O:

- (a) The awarding authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provide however, that if there

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is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

- (b) The general contractor must submit the amount of a claim under provisions (a) to the awarding authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the awarding authority in writing of the act of failure to involved in the claim.
- (c) In the event a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any subcontractor, the subcontractor shall have the same rights against the general contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the general contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the general contractor or the subcontractor may have against each other.

### **ARTICLE 9. REQUESTS FOR INTERPRETATIONS AND APPROVALS; SUBSTANTIAL DEVIATIONS FROM PLANS AND SPECIFICATIONS**

- 9.1 As provided in Mass. G.L., Ch. 30, Sec. 39P, whenever the OWNER, awarding authority, engineer or architect is requested to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, he shall make that decision promptly and, in any event, no later than thirty days after the written submission for decision. However, if such decision requires extended investigation and study, the person making the decision shall, within thirty days after receipt of the submission, give the party making the decision written notice of the reasons why the decision can not be made within the thirty day period and the date by which the decision will be made.
- (b) The CONTRACTOR must perform all the work in conformity with the contract plans and specifications. Substantial deviations, or change orders, may be made only as provided by Mass.Gen.L., Ch. 30, Sec. 39I and Mass.Gen.L., Ch. 44, Sec. 31C, and as provided herein. Change orders must be in writing and only when authorized by the OWNER or awarding authority or by the architect or engineer in charge of the work who is duly authorized by the awarding authority to approve such deviations. In order to avoid delays in performance of the work, within thirty days after an authorized written

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change order, the written order shall be confirmed by a certificate of the awarding authority stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination and if the deviation is of any other nature, the reasons for such deviation, giving justification therefore; (2) that the specified deviation does not materially injure the project as a whole; (3) that either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the OWNER and the CONTRACTOR and the amount in dollars of such adjustment; and (4) that the deviation is in the best interest of the OWNER. The certificate shall be signed under the pains and penalties of perjury and shall be a permanent part of the file record of the work contracted for.

- (c) Mass. Gen. L., Ch. 44, Sec. 31C provides that no change order as provided for in (b) above which results in additional cost shall be deemed to have been given until the auditor or accountant or other officer of the TOWN having similar duties has certified thereon that an appropriation in the amount of such order is available therefore; but such certificate shall not be construed as an admission by the TOWN of its liability to pay for such work; rather, such certification shall bar any defense by the TOWN on the grounds of insufficient appropriation.

### **ARTICLE 10. NONPERFORMANCE**

In the case of any default on the part of the CONTRACTOR with respect to any of the terms of this Agreement, the OWNER shall give written notice thereof, and if said default is not made good within such time as the OWNER shall specify in writing, the OWNER shall notify the CONTRACTOR in writing that there has been a breach of the Agreement and thereafter the OWNER shall have the right to secure the completion of the work remaining to be done on such terms and in such manner as the OWNER shall determine, and the CONTRACTOR shall pay for the completion of such work and reimburse the OWNER for all expenses incurred by reason of said breach. The CONTRACTOR in case of such breach shall be entitled to receive payment only for work completed satisfactorily prior to said breach, so long as the total paid hereunder does not exceed the Contract sum, and the amount of any balance due the CONTRACTOR shall be determined by the OWNER and certified to the CONTRACTOR. The OWNER shall be reimbursed by the CONTRACTOR for the cost of additional services required by the OWNER in the case of a breach.

### **ARTICLE 11. TERMINATION**

This Agreement may be terminated by either party upon not less than seven days written notice should the other party breach this agreement or substantially fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

### **ARTICLE 12. SUBCONTRACTING**



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The CONTRACTOR shall not subcontract any of the work, which it is required to perform under this Contract to any corporation, entity or person without the prior written approval of the OWNER.

### **ARTICLE 13. NOTICE**

All notices required to be given under this Agreement shall be given in writing and shall be effective upon receipt by hand delivery or certified mail to:

The Town of Needham:      Kate Fitzpatrick  
   Town Manager  
   1471 Highland Avenue  
   Needham, Massachusetts 02492

The Contractor:              Name \_\_\_\_\_  
   Title \_\_\_\_\_  
   Company \_\_\_\_\_  
   Address \_\_\_\_\_

### **ARTICLE 14. CONTRACT CONDITIONS SPECIFICALLY REQUIRED BY LAW**

- 14.1 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.
- 14.2 Pursuant to Mass. Gen. L. Ch. 30, § 39M, an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications.
- 14.3 Pursuant to Mass. Gen. L. Ch. 149, § 26, the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works by the Commonwealth, or by a county, town, authority or district, or by persons contracting or subcontracting for such works, preference shall first be given to citizens of the commonwealth who have been residents of the commonwealth for at least six months at the commencement of their employment who are veterans as defined in clause Forty-third of section seven of chapter four, and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the commonwealth generally who have been residents of the commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States; and preference in employment shall be given to veterans and citizens who are residents of the Town of Needham.

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- 14.4 Pursuant to Mass. Gen. L. Ch. 149, § 34, no laborer, workman or mechanic, foreman or inspector employed under this contract shall be required or permitted to work more than eight hours in any one-day or more than forty-eight hours in any one week, or more than six days in any one week, except in cases of emergency.
- 14.5 If funding for this Project is provided by the Commonwealth of Massachusetts, in whole or in part (such as reimbursements, grants and the like), then the OWNER shall incorporate into this Contract the current applicable minority-owned business enterprise (MBE) and women-owned business enterprise (WBE) participation goals, as determined by DCAM. Reductions or waivers of these goals may be permitted by the OWNER where the size, nature or location of the project makes achieving such levels of MBE or WBE participation unfeasible.
- 14.6 This Contract is subject to the Supplemental Equal Opportunity Anti-Discrimination and Affirmative Action Program (EEO/AA) provisions attached to the Project Manual.

### **ARTICLE 15. INSURANCE**

- 15.1 The CONTRACTOR shall, at its own expense, obtain and maintain general liability and motor vehicle liability insurance policies protecting the OWNER in connection with any operations included in this Contract, and shall have the OWNER as an additional insured on the policies. General liability coverage shall be in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury liability and \$1,000,000 per occurrence and \$2,000,000 aggregate for property damage liability. Motor vehicle coverage shall include coverage for owned, hired and non-owned vehicles and shall be in the amount of at least \$1,000,000 per person and \$2,000,000 per occurrence for bodily injury liability and \$1,000,000 per occurrence for property damage liability.
- 15.2 If the CONTRACTOR shall provide professional or design services to the OWNER, then the CONTRACTOR shall carry professional malpractice or an errors or omissions policy in the amount of at least \$1,000,000 per claim, and may have an aggregate deductible of not more than \$25,000.
- 15.3 All insurance coverage shall be in force from the time of the Agreement to the date when all work under the contract is completed and accepted by the OWNER. Since this insurance is normally written on a year-to-year basis, the CONTRACTOR shall notify the OWNER should coverage become unavailable or if its policy should change.
- 15.4 The CONTRACTOR shall, before commencing performance of this contract, provide for the payment of compensation and the furnishing of other benefits by an insurance company duly licensed to do business in accordance with Massachusetts General Laws, Chapter 152, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract.
- 15.5 Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the contract. Any cancellation of insurance whether by the

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insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the OWNER at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.

- 15.6 The CONTRACTOR shall indemnify, defend, and save harmless the OWNER and all of the OWNER's officers, agents and employees from and against all suits and claims of liability of every name and nature, including costs of defending any action, for or on account of any injuries to persons or damage to property of the OWNER or any person, firm, corporation or association arising out of or resulting from any act, omission, or negligence of the CONTRACTOR, subcontractors and its and their agents or employees in the performance of the work covered by this Agreement and/or failure to comply with terms and conditions of this Agreement, but only in respect of such injuries or damages sustained during the performance and prior to the completion and acceptance of the work covered by this Agreement. The foregoing provisions shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the CONTRACTOR under the Contract.

### **ARTICLE 16. PERFORMANCE AND PAYMENT BONDS**

- 16.1 In accordance with Mass. Gen. L. Ch. 149, § 44E, prior to execution of a contract pursuant to this section, the CONTRACTOR shall furnish to the OWNER a payment bond and a performance bond of a surety company qualified to issue bonds in the Commonwealth and satisfactory to the OWNER each in the sum of the contract price. The performance bond shall remain in full force and effect for at least one year after the project's completion, and longer if required to cover guarantees and/or pending claims.
- 16.2 It is distinctly agreed and understood that any changes made in the drawings and specifications for this work, whether such changes increase or decrease the amount of work required, or any change in the manner or time of payments made by the OWNER to the CONTRACTOR, shall in no way void, release or affect the liability and surety on the bond given by the CONTRACTOR

### **ARTICLE 17. WAGE RATES**

- 17.2 The CONTRACTOR shall comply with the requirements of Chapter 149 of the General Laws, Sections 26 to 27D inclusive and shall execute a STATEMENT OF COMPLIANCE on the form contained in the Specifications. The hourly wage rates established by the Commissioner of Labor and Industries for this work are to be used and are contained in the specifications.
- 17.3 Section 26 - Payments by employers to health and welfare plans under collective bargaining shall be included for the purpose of establishing minimum wage rates as herein provided.
- 17.4 Section 27 - The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans as provided in the previous section,

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and such payments shall be considered as payments to persons under this section performing work as herein provided. Any employer engaged in the construction of such works who does not make payments to a health and welfare plan, where such payments are included in said rates of wages, shall pay the amount of said payment directly to each employee engaged in said construction.

- 17.5 The CONTRACTOR and every subcontractor shall file weekly payroll records with the OWNER in the form described in Mass. Gen. L. Ch. 149, § 27B.
- 17.6 Pursuant to Mass. Gen. L. Ch. 149, § 34B, the CONTRACTOR shall pay any Reserve Police Officer employed by it the prevailing wage of regular Police Officers in the Town of Needham.

### **ARTICLE 18. TIME RECORDS**

The CONTRACTOR shall cause to be maintained complete, accurate, and detailed records of all time devoted to the project by the CONTRACTOR and each consultant or subcontractor employed by the CONTRACTOR. The OWNER may at all reasonable times audit such records. The CONTRACTOR shall comply with Mass. Gen. Laws, Chapter 30, Section 39R, which requires the CONTRACTOR to:

- i) maintain accurate and detailed accounts for a six-year period after the final payment [(b)(1)].
- ii) file regular statements of management concerning internal auditing controls [(c)].
- iii) file an annual audited financial statement [(d)].
- iv) submit a statement from an independent certified public accountant that such CPA has examined management's internal auditing controls and expresses an opinion as to their consistency with management's statement in (b) above and whether such statements are reasonable with respect to transactions and assets that are substantial in relation to the CONTRACTOR'S financial statement [(c)(4)(1)-(2)].

### **ARTICLE 19. GOVERNING LAW**

This Agreement and performance hereunder are governed in all respects by the laws of the Commonwealth of Massachusetts and all other applicable by-laws and administrative rules, regulations and orders.

### **ARTICLE 20. CONSENT TO VENUE**

The CONTRACTOR agrees that it shall commence and litigate all actions or proceedings arising in connection with this Agreement exclusively in the Dedham District Court or in the Norfolk Superior Court, both of which are located in the County of Norfolk, Commonwealth of Massachusetts. The aforementioned choice of venue is intended to be mandatory and not

permissive in nature, thereby precluding the possibility of the CONTRACTOR commencing or prosecuting any litigation against the Town, with respect to or arising out of this Agreement, in any court or forum other than those specified in this paragraph. It is further agreed that the parties to this Agreement hereby waive their rights to a jury trial.

#### **ARTICLE 21. CONFLICT OF INTEREST**

By execution of this Agreement with the OWNER, the CONTRACTOR acknowledges that the OWNER is a municipality for the purposes of Massachusetts General Law Chapter 268A (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the CONTRACTOR based on said statute.

#### **ARTICLE 22. MATERIALS AND WORKMANSHIP**

Unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new. All workmanship shall be first class and by persons qualified in their respective trades.

#### **ARTICLE 23. SUPERINTENDENCE BY CONTRACTOR**

The CONTRACTOR shall superintend the work at all times during progress or have a competent foreman or superintendent, satisfactory to the OWNER, with authority to act for the CONTRACTOR, superintend the work at all times during progress.

#### **ARTICLE 24. GUARANTEE OF WORK**

- 24.1 Except as otherwise specified, all work shall be guaranteed by the CONTRACTOR against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of the Contract.
- 24.2 If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which in the opinion of the OWNER is rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the CONTRACTOR shall, promptly upon receipt of notice from the OWNER and at his own expense;
- i) Place in satisfactory condition in every particular all of such guaranteed work, correct all defect therein;
  - (ii) Make good all damage to the site, or equipment or contents thereof, which in the opinion of the OWNER is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and



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- (iii) Make good any work or material, or the equipment or site, which is disturbed in fulfilling any such guarantee.

### **ARTICLE 25. PROTECTION OF WORKS AND PROPERTY**

The CONTRACTOR shall at all times safely guard the OWNER'S property from injury or loss in connection with this Contract. The CONTRACTOR shall at all times safely guard, and protect his own work, and that of adjacent property from damage. All passageways, guard fences, lights and other facilities required for protection by State or Municipal laws and regulations and local conditions, must be provided and maintained.

### **ARTICLE 26. WEATHER PROTECTION**

As required by Mass. Gen. L. Ch. 149, § 44F, the CONTRACTOR shall provide weather protection to the site, materials and all of the OWNER'S property during the winter months pursuant to the standard specifications issued by the Department of Capital Planning and Operations of the Commonwealth of Massachusetts (DCPO).

### **ARTICLE 27. OWNERSHIP OF DOCUMENTS**

Upon completion of the final payment to the CONTRACTOR, the OWNER shall be the owner of all plans, specifications, electronic data and computations created by the CONTRACTOR that relate to this Agreement. The TOWN agrees that the information contained therein was produced specifically for this Agreement and agrees to hold the CONTRACTOR harmless from any liability of the OWNER'S use of these documents in any future project not directly related to the subject matter of this Agreement.

### **ARTICLE 28. LAWS, PERMITS AND REGULATION**

The CONTRACTOR shall obtain and pay for all licenses and permits and shall pay for all fees and charges for connection to outside service and use of property other than the site of the work for storage of materials or any other purpose.

### **ARTICLE 29. BINDING AGREEMENT AND ASSIGNMENT OF INTEREST**

This Agreement shall be binding upon the OWNER and the CONTRACTOR and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the OWNER and the CONTRACTOR. Neither the OWNER nor the CONTRACTOR shall assign, sublet or transfer any interest in this Agreement without the written consent of each other, and such consent shall not be unreasonably withheld.

### **ARTICLE 30. CORI REQUIREMENTS**

The CONTRACTOR shall perform criminal offender registry information (CORI) checks on all employees prior to their starting work in any Town of Needham facility or building.

## **SPECIMEN**

In accordance with G.L. c. 6, §§ 167-178B, the OWNER may request and obtain all available criminal offender record information (CORI) from the Criminal History Systems Board on any of CONTRACTOR'S employees who may have unsupervised contact with children, the disabled, or the elderly during the performance of their work under this Contract. The OWNER'S assessment of CORI records is based on regulations issued by the Executive Office of Health and Human Services, 101 C.M.R. 15.00-15.17.

Pursuant to G.L. c. 6, §§ 178C-178P, the CONTRACTOR also authorizes the OWNER to use local and national sexual offender registry information (SORI) to determine if any of the CONTRACTOR'S employees pose an unreasonable risk to children, the disabled, or the elderly during the performance of their work under this Contract.

The Town shall provide the CORI and SORI Request Forms as needed.

### **ARTICLE 31. COMPLIANCE WITH TAX LAWS**

Pursuant to G.L., c. 62C, §49A, the undersigned, acting on behalf of the CONTRACTOR, certifies under the pains and penalties of perjury, to the best of the undersigned's knowledge and belief, that the CONTRACTOR is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Social Security Number or  
Federal Identification Number

\_\_\_\_\_  
Signature of Individual or Corporate Name

By: \_\_\_\_\_  
Corporate Officer (if applicable)

**SPECIMEN**

**SIGNATURES**

**IN WITNESS WHEREOF** the parties hereto have executed THREE (3) copies of this Agreement the day and year first above written.

**CONTRACTOR:**\_\_\_\_\_

**OWNER: TOWN OF NEEDHAM**

**BY\*:**

**BY:**

\_\_\_\_\_  
**TITLE:**

\_\_\_\_\_  
Kate Fitzpatrick, Town Manager

*\* My signature above certifies that I am duly authorized, or that I have attached a signed Certificate of Vote from my Board of Directors giving me authority, to sign this Contract.*

This is to certify that the funds have been appropriated or otherwise reserved by the Town for the purposes set forth in the Contract herein.

A/C#:

\_\_\_\_\_  
Town Accountant

Dated: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
David S. Tobin, Esq.  
Town Counsel  
Town of Needham

Dated: \_\_\_\_\_

**CERTIFICATE OF AUTHORITY**  
**CORPORATE**

1. I hereby certify that I am the Clerk/Secretary of \_\_\_\_\_  
(insert full name of Corporation)
2. corporation, and that \_\_\_\_\_  
(insert the name of officer who signed the contract and bonds.)
3. is the duly elected \_\_\_\_\_  
(insert the title of the officer in line 2)
4. of said corporation, and that on \_\_\_\_\_  
(insert a date that is **ON OR BEFORE** the date the officer signed the **contract and bonds.** )

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. \_\_\_\_\_ the \_\_\_\_\_  
(insert name from line 2) (insert title from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: \_\_\_\_\_  
(Signature of Clerk or Secretary)\*

**AFFIX CORPORATE  
SEAL HERE**

7. Name: \_\_\_\_\_  
(Please print or type name in line 6)\*

8. Date: \_\_\_\_\_  
(insert a date that is **ON OR AFTER** the date the officer signed the **contract and bonds.**)

The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.